

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CLAUDE WILSON)	
Claimant)	
VS.)	
)	Docket Nos. 265,834 & 265,835
WATKINS AUTO SALVAGE)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals Administrative Law Judge John D. Clark's March 28, 2002, preliminary hearing Order.¹

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for medical treatment for a January 18, 2001, work-related left knee injury.

Respondent appeals and argues that claimant failed to prove by a preponderance of the credible evidence that his need for medical treatment for his left knee condition was the result of an accidental injury that arose out of and in the course of his employment with respondent. Respondent contends that the medical evidence admitted into the preliminary hearing record instead proves that claimant's need for medical treatment is the result of an underlying degenerative arthritic condition and is not the result of the January 18, 2001, work-related accident. Thus, the respondent requests the Appeals Board (Board) to reverse the ALJ's preliminary hearing Order and deny claimant's request for medical treatment.

¹ The ALJ's March 28, 2002, preliminary hearing Order was identified by the ALJ as Docket No. 265,834. Respondent's Request for Review was identified with Docket Nos. 265,834 and 265,835. After reviewing the administrative file, the Board finds the correct docket number that should identify the ALJ's March 28, 2002, preliminary hearing Order should be Docket No. 265,835. On May 17, 2001, claimant filed an Application for Hearing alleging a September 6, 2000, accident date for a low back injury which was assigned Docket No. 265,834. The claimant filed an Application for Hearing on May 18, 2001, that alleged a date of accident of January 18, 2001, for a left knee injury which was assigned Docket No. 265,835.

Conversely, claimant contends that the preliminary hearing record containing his testimony and medical treatment records and reports prove his need for medical treatment for his left knee condition is a result of the January 18, 2001, work-related accident. Claimant requests the Board to affirm the ALJ's preliminary hearing Order. Claimant also argues that the Board should dismiss respondent's appeal because the ALJ had previously determined in a June 19, 2001, preliminary hearing Order, which was not appealed to the Board, that claimant's left knee injury arose out of and in the course of his employment with respondent. Claimant argues if respondent disagreed with the ALJ's determination in the June 19, 2001, preliminary hearing Order, then the respondent was required to appeal that decision to the Board and may not continue to request multiple preliminary hearings on the same issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

The March 28, 2002, preliminary hearing Order, that is the subject of this appeal, is the third preliminary hearing Order entered in Docket No. 265,835. On June 19, 2001, after a preliminary hearing was held on that same date, the ALJ found claimant suffered a January 18, 2001, left knee injury while working for the respondent. The ALJ ordered all previous medical treatment paid as authorized medical and further ordered respondent to provide the names of three physicians from which claimant could select an authorized treating physician. Claimant selected orthopedic surgeon Kenneth A. Jansson, M.D.

Claimant saw Dr. Jansson on one occasion, August 22, 2001. Dr. Jansson reviewed claimant's previous medical treatment records, an MRI examination of claimant's left knee and conducted a physical examination of claimant. He found claimant's left knee with advanced degenerative arthritis and a large notch osteophyte consistent with an absent anterior cruciate ligament.

Claimant provided Dr. Jansson with a history of his left knee being asymptomatic until he banged his knee on a metal brace of some shelves at work on January 18, 2001. Dr. Jansson's impression was that claimant's injury at work probably made his left knee symptomatic but the work accident did not cause the chronic conditions that exist in claimant's knee.

Based on Dr. Jansson's August 22, 2001, medical report, on September 14, 2001, respondent filed an Application for Preliminary Hearing requesting the ALJ to terminate his June 19, 2001, preliminary hearing Order that granted claimant's request for medical treatment. Respondent argued that Dr. Jansson's medical opinion determined that claimant's need for medical treatment was the result of his preexisting degenerative arthritic condition and had no relationship to his January 18, 2001, work accident.

On October 2, 2001, another preliminary hearing was held. No testimony was presented, but Dr. Jansson's August 22, 2001, medical record was admitted into evidence. Claimant's attorney, however, at the preliminary hearing, requested that the ALJ appoint another physician to perform an independent medical examination of claimant to address the causation issue. Thereafter, in an October 4, 2001, preliminary hearing Order, the ALJ instead ordered respondent to provide claimant with the names of three additional physicians for claimant to select a new authorized treating physician. This time claimant selected orthopedic surgeon Dr. Robert L. Eyster, M.D.

Dr. Eyster saw claimant on February 13, 2002. Claimant provided Dr. Eyster with a history of no left knee symptoms until he rammed his knee into a shelf at work on January 18, 2001. Dr. Eyster found claimant with pain and swelling in and around his left knee. On physical examination, Dr. Eyster found claimant's left knee showed mild effusion, bony osteophyte formations, crepitus, and a lack of full motion. Dr. Eyster also reviewed the previous MRI examination of claimant's left knee that showed severe degenerative arthritic changes. Dr. Eyster's diagnosis was a degenerative arthritic left knee. Dr. Eyster went on to opine that claimant's work accident only created a pain syndrome and that pain would have developed in the very near future regardless of the injury. The doctor also opined that he did not believe the work injury contributed to claimant's left knee problems, other than the belief that the increased pain was brought about by the work-related accident. Dr. Eyster found claimant in need of a total knee replacement.

In a workers compensation case, the test is not whether the work-related activity or injury caused the condition but whether the work-related activity or injury aggravated or accelerated the condition.² Additionally, claimant's testimony alone is sufficient evidence of his own physical condition.³

Here, the medical evidence established that claimant has severe degenerative arthritic changes in his left knee. Those degenerative arthritic changes are the primary reason that claimant now is in need of a total knee replacement. But claimant's testimony established that before he rammed his knee into the post on the shelf at work on January 18, 2001, his knee was asymptomatic and he had no limitations due to the underlying arthritic condition in his left knee.

Now, claimant has continuing pain, swelling, limitation of motion and the need to use a cane to ambulate. Both Dr. Jansson and Dr. Eyster opined that, although the work accident did not cause claimant's left knee arthritic condition, the accident, however, did make his underlying degenerative arthritic condition symptomatic.

² See Hanson v. Logan U.S.D. 326, 28 Kan. App. 2d 92, 95, 11 P.3d 1184 (2000).

³ See Graff v. Trans World Airlines, 267 Kan. 854, 863-64, 983 P.2d 258 (1999).

The Board concludes, at this stage of the proceedings, that the preliminary hearing record proves that claimant's January 18, 2001, work-related accident, at a minimum, accelerated claimant's left knee underlying degenerative arthritic condition resulting in claimant's need for a total knee replacement.

In claimant's brief, he objected to respondent requesting multiple preliminary hearings before the ALJ instead of appealing the adverse ruling to the Board. The Board has had the opportunity on other occasions to address this same issue. The Workers Compensation Act does not limit the number of preliminary hearings that can be held in a particular case.⁴ The Board generally agrees that multiple preliminary hearings should not be conducted where there is no new evidence to present. But the Board believes that the ALJ's have discretion to conduct such additional preliminary hearings as they determine needed and appropriate.⁵

WHEREFORE, it is the finding, decision, and order of the Board that ALJ John D. Clark's March 28, 2002, preliminary hearing Order is affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

c: Chris Randall, Attorney for Claimant
Brian R. Collignon, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation

⁴ See K.S.A. 44-534a.

⁵ See Besler v. Sabatini Trust, WCAB Docket No. 236,676 (March 2001) and Perrill v. Wesley Medical Center, WCAB Docket No. 233,702 (February 1999).